No. 85-1708

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF CALIFORNIA, *et al.*,

Appellants,

v.

CABAZON BAND OF MISSION INDIANS, *et al.*,

Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

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BRIEF OF APPELLEES

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QUESTION PRESENTED

Whether a state law and a local ordinance regulating the operation of bingo games, and a local ordinance prohibiting certain card games that are permitted under state law, can be applied to prevent federally-recognized Indian tribal governments from conducting such games on their reservations, where those activities are sanctioned by the Department of the Interior and provide the sole source of revenue and the main source of employment for the tribes?

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OPINION BELOW

The amended opinion of the Court of Appeals for the Ninth Circuit is reported at 783 F.2d 900.

JURISDICTION

The jurisdiction of the district court was invoked under 28 U.S.C. §1331, 1343(3) and 1362.

This Court does not have jurisdiction over this appeal under 28 U.S.C. §1254(2). Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 247 (1984). The Order of the district court, as affirmed by the court of appeals, held that the state and local laws at issue in this case "are of no force and effect" on the tribal reservations, and that the appellants "are without authority or jurisdiction" to attempt to enforce them. See Order reprinted in Appellants' Jurisdictional Statement, Appendix at A-13 to A-14. As in Silkwood, the statutes themselves were not struck down in this case; the court only invalidated an attempted exercise of authority purportedly made under the state and local laws. Unlike the cases cited by the appellants, including Ohio Civil Rights Comm'n. v. Dayton Schools, 477 U.S. ___, 91 L.Ed.2d 512 (1986), the court below did not find the statutes unconstitutional either facially or as applied. Instead, it found that the appellants had no lawful authority to attempt to apply the statutes at all. As a result, 28 U.S.C. §1254(2) does not confer appellate jurisdiction in this case.

STATEMENT OF THE CASE

1. INTRODUCTION

Although this case involves only two Indian tribes, the importance of Indian bingo to tribes elsewhere in the country cannot be overlooked. There are currently between eighty and one hundred tribes operating bingo games nationwide. These tribal activities were begun in response to substantial cuts in federal funding for Indian programs and President Reagan's Indian Policy Statement of January 24, 1983, which "encouraged the tribes to reduce their dependence on Federal funds by providing a

greater percentage of the cost of their self-government." H.R. Rep. No. 488, 99th Cong. 2d Sess. 10, 12 (1986) (hereafter "H. Rep. 488").

The Department of the Interior regards tribal bingo as an appropriate means by which tribes can fulfill this federal policy objective. Joint Appendix (J.A.) 219, 243. As a result, the Interior Department has been actively involved in supporting and promoting tribal bingo activities. It has approved tribal bingo ordinances, H.Rep. 488 at 10, and has provided some $8 million in direct grants and loan guarantees to tribes for the construction of bingo facilities. 132 Cong. Rec. S.12017-18 (daily ed. Aug. 15, 1986) (statement of Senator Andrews). Revenues from tribal bingo activities are being used to fund a wide variety of important tribal programs and services, and the games provide significant employment opportunities for economically depressed reservations. Id.; see also, Gambling on Indian Reservations and Lands, Hearing before the Senate Select Committee on Indian Affairs, 99th Cong. 1st Sess., June 26, 1985, pp. 320-350 and 595-603.

Every federal court to have addressed the issue, including the court below, has upheld the right of Indian tribes to sponsor bingo games free from state jurisdiction.[1] In turning to bingo in order to raise governmental

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[1] Seminole Tribe v. Butterworth, 658 F.2d 310 (5th Cir. 1981), cert. denied, 455 U.S. 1020 (1982); Barona Group of the Capitan Grande Band v. Duffy, 694 F.2d 1185 (9th Cir. 1982), cert. denied, 461 U.S. 929 (1983); Langley v. Ryder, 778 F.2d 1092 (5th Cir. 1985); Oneida Tribe of Indians v. Wisconsin, 518 F. Supp. 712 (W.D. Wisc., 1981); State of Washington v. Hatch, C-83-1518R (W.D. Wash., Aug. 14, 1984), appeal dismissed (9th Cir., Feb. 21, 1985); Mashantucket Pequot Tribe v. McGuigan, 626 F. Supp. 245 (D. Conn. 1986); Indian Country U.S.A. v. State of Oklahoma, Nos. 85-C643-E (N.D. Ok., April 24, 1986); Seneca-Cayuga Tribe v. Oklahoma, No. 85-C-639-9 and 86-C-393-B (N.D. Ok., June 5, 1986), 13 Indian L. Rep. 3103; Lac du Flambeau Band v. Williquette, 629 F.Supp. 689 (W.D. Wis. 1986).

revenues, the tribes have responded as have many states, including California, which have recently turned to state lotteries, numbers games and other forms of gambling as a convenient form of voluntary taxation. On many reservations, the jobs and revenues that bingo is providing are giving tribes their first real chance at economic self-sufficiency. The loss of this opportunity would be devastating not only to the Cabazon and Morongo Bands, but throughout Indian country generally.

2. STATEMENT OF FACTS

The Morongo Band of Mission Indians (hereinafter the "Morongo Band") and the Cabazon Band of Mission Indians (hereinafter the "Cabazon Band") are both federally recognized Indian tribes.[2] Their reservations are held in trust by the United States and consist of more than 32,000 and 1,700 acres of land, respectively, in the desert region of Southern California. Neither reservation has any known natural resources to generate revenue for the operation of its tribal government or for the provision of services to or employment for its members.

The Morongo Band authorized the establishment of its tribal bingo enterprise to provide its members with jobs and to raise revenues with which to provide governmental services. Among the Band's more than 730 enrolled tribal members, the unemployment rate was in excess of sixty-four percent prior to the commencement of bingo. 86 I.D. 680, 681-682 (1979). Less than one square mile of the reservation, is suitable for economic development. Id.

On April 23, 1983, the Morongo Band adopted a Tribal Bingo Ordinance authorizing and regulating bingo

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[2]Unless otherwise noted, all facts contained herein are taken from the two Agreed Statements of Unconverted Facts filed in district court. See J.A. 59 (Cabazon); J.A. 78 (Morongo).

on the reservation.[3] That Ordinance has been approved by the Secretary of Interior. See Appendix A. Through its short-term management agreement, a bingo hall was built on tribal land, the tribe receives not less than seventy-five percent of the revenues, and the Band is actively involved in the formulation and implementation of all management and operational policies of the enterprise. J.A. 92. This management agreement was approved by the Secretary of the Interior pursuant to 25 U.S.C. § 81. J.A. 216.

The tribe has now employed 101 Indians, taking most members off welfare or unemployment and making jobs available to every tribal member able or willing to work. In the first seven months of operation alone, the payroll paid to tribal members and their spouses exceeded $490,000, making many self-supporting for the first time.[4]

The Cabazon Band is governed by Articles of Association which were approved by the Secretary of the Interior on April 13, 1965, and which empower the General Council "to manage the economic affairs of the Band and to establish and operate such commercial enterprises as it may deem to be for the benefit of the

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[3]The Ordinance restricts the use of the revenues to "the support of programs to promote the health, education and general welfare" of the Band. It is intended that the funds will enable the Band to improve living conditions on the reservation, to repair, modernize and maintain the reservation water system, to build a center and establish programs for senior citizens, to establish pre-school and day care programs for the children of members, and to provide other necessary governmental services.

[4]See Gambling on Indian Reservations and Lands, Hearing before the Senate Select Committee on Indian Affairs, 99th Cong. 1st Sess., June 25, 1985, pp. 251-279, (Testimony of Robert Martin, Morongo Tribal Chairman).

Band." Pursuant to these powers, on February 9, 1980, the Cabazon General Council enacted Tribal Ordinance No. 5.6 regulating bingo games on the Cabazon Reservation[5] and on May 24, 1980 enacted Tribal Ordinance No. 5.7, regulating card clubs on the Cabazon Reservation.[6] The Cabazon card room has been in operation since October, 1980. See Cabazon Band of Mission Indians v. City of Indio, 694 F.2d 634 (9th Cir. 1982). Its bingo enterprise was opened in March, 1983. Although it previously utilized an outside management firm for its bingo operation, the Cabazon Band recently terminated that agreement. See Appendix C.

The revenues from these enterprises are the sole source of funds to operate the tribal government or to provide tribal services and programs on the Cabazon Reservation.[7] In addition, the enterprises provide employment opportunities for all tribal members and members of their families that need jobs, particularly those with the fewest job skills and the least chance for

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[5]Ordinance 5.6 authorizes and regulates the playing of bingo and provides that all "net revenues shall be used for the purpose of promoting the health, education, welfare and well being of the Cabazon Indian Reservation and for other tribal purposes." This Ordinance has been approved by the Secretary of the Interior. See Appendix B.

[6]J.A. 68. Ordinance 5.7 authorizes the establishment of a card club on the reservation to be owned and operated by the Cabazon Band and authorizes only the playing of draw poker, lowball draw poker, and panguingue, games not prohibited by California Penal Code §330. See discussion below at 47.

[7]J.A. 256. The funds are used to provide a private health insurance program for tribal members and their families; a reservation security force; extension of basic utility services to the reservation; traditional funeral and mourning ceremony expenses; upkeep of the tribal cemetery; and establishment of a tribal court system.

employment elsewhere. Without these sources of revenue, the Cabazon Band could not maintain a viable tribal government. J.A. 260.

The appellants do not allege that either tribal bingo enterprise or the Cabazon card room were or are associated with organized crime. J.A. 66, 84. The Court of appeals held that "there is no evidence whatsoever that organized crime exists on these reservations". 783 F.2d at 904.

3. ANALYSIS OF CALIFORNIA BINGO LAW

The California Constitution, Article IV, §19, provides that "the legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes." Pursuant to this authorization, the Legislature has enacted California Penal Code §326.5 which defines and regulates some aspects of bingo games.

The tribal bingo games at issue here differ from state-authorized bingo in only two ways. First, the tribes make more extensive use of salaried personnel, in that one of the primary purposes of operating the games is to provide employment opportunities on their reservations. In addition, the game prizes sometimes exceed $250. While the prizes awarded by the tribes are sometimes greater than those allowed under state law, it should be noted, however, that the average prize awarded per game at the Cabazon Reservation for a representative four-month period in 1984 was $184.89. J.A. 267. An analysis of the prizes awarded at Morongo produced similar results.

With these two exceptions, the tribal bingo games are operated in virtual conformity with the requirements of Penal Code §326.5. Indian tribes are non-taxable government entities.[8] Each tribe's ordinance prohibits the

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[8] IRS Revenue Rulings 67-284 (1967) and 81-295 (1981); see, Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973).

participation of minors in the bingo games. Each tribe conducts its bingo games in halls owned by the tribe on tribal property. Both the Morongo and the Cabazon bingo enterprises are required by their respective tribal ordinances to "be open to the public", not just to members of the tribe; a requirement analogous to that of §326.5(g). Separate accounts are maintained for the bingo operations by each tribe and the proceeds are used for charitable/governmental purposes, administrative expenses, overhead, security, and the prizes. Both tribes prohibit the participation by persons not physically present when the game is being conducted.

It is significant that Penal Code §326.5 does not limit the number of games which an eligible organization may operate, the number of games which any participant may play, the amount of money which any participant may spend, the admission price to participate, the total receipts or expenditures of the bingo operations of an eligible organization, the number of organizations which are eligible to conduct bingo games, or the advertising of bingo games; nor does the Code define "charitable purposes" for which the money must be spent. In fact, under §326.5(k)(4) if the gross bingo proceeds of an organization are less than $5,000 per month, all of the proceeds can be used for running the bingo games, with no other charitable purpose required.

Most important, the California laws do not regulate the playing or participation in bingo games; instead, only the operators of games--in this case the Morongo and Cabazon Bands-- are regulated. 783 F.2d at 904. Members of the public are absolutely free to participate whenever, wherever and to whatever degree they choose. See also Seminole Tribe v. Butterworth, 658 F.2d at 316.

SUMMARY OF ARGUMENT

The analysis of this case must begin with the well-established principle that absent express congressional authorization, states have no jurisdiction over Indian tribes on the reservations. Such jurisdiction cannot be

obtained through amorphous principles of federal common law and was not granted under PL-280. Because the incidence of the California bingo laws falls directly upon the tribes themselves and because there is no statute giving appellants the jurisdiction which they seek, the cases upon which appellants rely are inapposite.

The federal common law "balancing test," through which appellants seek jurisdiction over the tribes, has only been applied by this Court to review state assertions of jurisdiction over non-Indians on the reservation. To apply this test to the tribes here would require a radical departure from this Court's precedents and a reveral of 150 years of federal Indian law and policy.

Even assuming arguendo that this test applied herein, the tribes would prevail nevertheless. In applying the common law to determine whether states have jurisdiction over non-Indians on the reservations, this Court has held that there are two independent but related barriers, either of which standing alone is sufficient to bar state jurisdiction: infringement on the right of tribal self-government and preemption by federal law, regulation and policy. Under either formulation, a particularized inquiry in this case demonstrates that the federal and tribal interests in support of tribal bingo are strong, while the state interest is speculative and weak.

Moreover, there is no statutory basis for the jurisdiction claimed by the appellants in this case. PL-280 neither gives jurisdiction over the tribes themselves nor makes civil regulatory laws applicable on the reservations. The Organized Crime Control Act (OCCA) is a federal criminal statute which does not give appellants jurisdiction to enforce their civil regulatory laws on the reservation. The OCCA also expressly exempts non-profit bingo. Therefore, questions regarding the scope of the OCCA are not properly before the Court because of issues of standing, ripeness and justiciability.

Finally, the appellants do not have jurisdiction to apply a county ordinance to prohibit the operation of the

Cabazon tribal card room. That enterprise is identical in all respects to hundreds of other card rooms operating elsewhere in California, including at least five others in Riverside County.

ARGUMENT

I. THE APPELLANTS' RELIANCE ON COLVILLE AND RICE IS MISPLACED

The appellants place heavy reliance on Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134 (1980) and Rice v. Rehner, 463 U.S. 713 (1983). Upon careful analysis, however, it is apparent that both cases are readily distinguishable from the factual and legal issues presented here, and that neither case can justify the unprecedented reach of state jurisdiction over the tribes for which the appellants argue.

In Colville, this Court held that the State of Washington could assert concurrent taxing authority over tribal cigarette sales to non-Indians. However, Colville permitted only the application of Washington's cigarette tax, the legal incidence of which specifically fell on the non-Indian purchasers. Washington's separate tobacco products tax could not be imposed, because the legal incidence of that tax fell directly on the tribal sellers. 447 U.S. at 139, n.2; see also Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463, 475 (1976) (prohibiting application of State taxes where the legal incidence fell on tribal members).

In contrast to the tax permitted in Colville, the legal incidence of the state and local bingo laws at issue here falls directly on the tribes. California's statutory bingo scheme is directed at, regulates and controls only the organization sponsoring the bingo game, not the individual bingo players. 783 F.2d at 904. In Colville, unlike here, there was "no direct conflict between the State and tribal [taxation] schemes." 447 U.S. at 158. Here, appellants claim the right to shut down these tribal enterprises

completely. Colville plainly did not contemplate or authorize such direct state control of tribal affairs.

Beyond these distinctions, Colville is inapposite for at least two other reasons. In that case, the Court did not hold that because the tribes were marketing an exemption from state tax laws, that the state could prohibit the tribes from engaging in the activity. Instead, the Court merely found that the revenue interest of the tribes did not outweigh the competing state revenue interests because the value being marketed was "not generated on the reservations by activities in which the tribes have a significant interest," id. at 155, and because the tribes did not have a "vested right" to any such sales. Id. at 151, n.27. In the present case, neither of these limiting conditions is present. First, even the appellants have conceded that the recreational activities being provided by the tribes in this case constitute "value generated by on-reservation activities." 783 F.2d at 906. The tribes here are offering recreational opportunities in large, permanent facilities which they have built; operate and regulate the games under tribal ordinances; provide ancillary services, including security protection, to their patrons; and use the revenues derived to provide on-reservation services to their members. In these respects, this case is far closer to New Mexico v. Mescalero Apache Tribe, 462 U.S. 336, 343 and n.26 (1983) (hereafter Mescalero), than to Colville. Second, the Tribes here do have a "vested right" to conduct bingo games with non-member participants. This right is "vested" in the sense that tribal bingo games have been expressly authorized, sanctioned, funded, and promoted by the federal government. See pages 22-26, below. Under these circumstances, the tribes here are not merely marketing an exemption from state tax laws, but have a federally-recognized "vested right" to sponsor bingo games on their reservations for the purpose of raising needed tribal revenues.

Rice v. Rehner, 463 U.S. 713 (1983) is also readily distinguishable from the case now before the Court. Rice involved the interpretation of 18 U.S.C. §1161, a statute

not relevant here, which provides that liquor may be sold on Indian reservations "in conformity both with the laws of the state" and with a tribal ordinance. Based on §1161 and its legislative history, the Court concluded that a state could require a licensed Indian trader operating a store on a reservation to obtain a state liquor license because that statute was an express congressional delegation to the state of concurrent authority over liquor sales. While the appellants place heavy emphasis on Rice, the tribes believe that there are at least three compelling reasons why Rice has no direct bearing on the issue presented in this case.

First, the Rice decision is, by its very terms, limited to the particular question of liquor licensing under 18 U.S.C. §1161. 463 U.S. at 723. Second, one of its principle underpinnings was the fact that in the particular context of liquor licensing, the Court found no "firm federal policy of promoting tribal self-sufficiency and economic development." Id. at 724. In this case, current federal policy promotes tribal economic development and recognizes tribal bingo enterprises as a legitimate means by which tribes can achieve that goal. Third, the Court made it clear that its narrow decision in Rice does not call into question and is not inconsistent with Bryan v. Itasca County, 426 U.S. 373 (1976), holding that PL-280 is not a grant of general civil regulatory authority to the states. 463 U.S. at 734, n.18. Thus, Rice was not fashioning broad new principles but rather was addressing a narrow issue under a specific federal statute. See H.Rep. 488 at 11.

Even if Rice may be of some limited applicability to this case, the appellants have seriously misread that decision. They characterize and discuss Rice as if it were a "balancing of the interests" case, rather than being based on an express statutory grant of authority to the states. Appellants' Brief (hereafter "App. Br.") 7; 16, n.9; 33, n.19. This position is plainly wrong. 463 U.S. at 715 ("Congress has delegated authority to the States"), at 726 ("Congress authorized . . . State regulation"). As a result, Rice does not support the appellants' principal

argument that the State can exercise regulatory jurisdiction over the tribes themselves in the absence of a congressional grant of such authority.

Nor does Rice or Colville broadly hold that principles of tribal self-government can never be implicated when the state's assertion of jurisdiction affects non-Indian activities on the reservation. App. Br. 13-14. This Court's holding in Mescalero clearly refutes any such contention.

Moreover, this Court has repeatedly recognized that current federal Indian policy strongly supports the twin goals of strengthening tribal self-government and promoting reservation economic development. See, e.g., Kerr-McGee Corp. v. Navajo Tribe, 471 U.S. ___, 85 L.2d. 200, 205 (1985); White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143 and n.10 (1980). These goals are intended to be complementary, for, as President Reagan noted, "without sound reservation economies, the concept of self-government has little meaning." Statement by the President, Indian Policy, 19 Weekly Comp. Pres. Doc. 98, 99 (Jan. 24, 1983). However, the only way that Indian tribes can achieve economic self-sufficiency and reservation development is through commercial interaction with the non-Indian community. No Indian tribe, no matter how resource-rich its reservation, can hope to develop its economy by marketing goods and services only to its own members. As a result, it would be contradictory, indeed, for this Court to hold that Indian tribes can achieve economic self-sufficiency only by giving up their powers of self-government. Yet, appellants argue for a broad holding that tribal self-government can never be infringed when the state seeks to assert jurisdiction over activities on the reservation in which non-Indians are participants. The Court rejected this argument when raised in a governmental context in Williams v. Lee, 358 U.S. 217 (1959), and it should be rejected here, too.

Finally, the appellants find fault with the court of appeals' analysis of "tribal tradition", as discussed in Rice. They contend that there is no tribal "tradition" of

commercial gaming with non-Indians on these reservations, and that absent such an historical record, the State is authorized to regulate these tribal activities. App. Br. 17-20. This argument is wrong both as a matter of fact and law.

The appellants rely upon a declaration and report submitted by Professor William Wallace, of California State University. J.A. 152-172. Although Professor Wallace notes that gambling was a "favorite preoccupation" of California Indians, id. at 154, and "intensive gambling characterized practically all inter-village or tribal gatherings," id. at 168, he concludes that Indians did not engage in commercial gambling and did not "traditionally" engage in gambling with non-Indians. Id. at 153.[9]

Far more authoritative is the declaration and report of Dr. Lowell Bean, Professor of Anthropology at California State University at Hayward, who has lived on the Morongo Reservation, conducted extensive original ethno-historical research, and has published extensively on Cahuilla Indian culture, which includes both the Cabazon and Morongo Bands. J.A. 206-215. According to his report, "gambling has at no time in the history of the Cahuilla peoples ceased as a significant activity, including today." Id. at 210. Dr. Bean continued that the tribes "received monies and/or goods for services provided to visitors or participants who came to gamble, wager, or observe gaming" and that once Indians interacted with

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[9]Professor Wallace's report and opinions were restricted to aboriginal or prehistoric California Indian cultures (i.e. before Indian contact with non-Indians), which he characterizes as the "traditional" period. C.R. 91; Excerpt of Record (EOR) 555-56. Therefore, using Dr. Wallace's definition, it would be impossible for Indians to have "traditionally" gambled with non-Indians, because "traditional" activities were practiced only before Indian/non-Indian contact. Kroeber, too, reports on this early period.

non-Indians in the Spanish, Mexican and American periods, non-Indians were encouraged to participate in gambling games, which included card and dice games and horse races. Id. at 210-213. Dr. Bean concluded from his nearly 30 years of research on the Cahuilla that the Cabazon and Morongo tribal bingo enterprises are

> a present day adaptation of the traditional ways of the Cahuilla people, e.g., the use of tribal lands for gaming, recreation, and generating an income from gambling and spending by outsiders for the benefit of the reservation.

Id. at 209.[10] Thus, there is, in fact, a well-recognized "tribal tradition" of gambling between Indians and non-Indians on the Cabazon and Morongo Reservations.

Despite having made this showing, we do not believe that the Court intended in Rice that a tribe would be required to demonstrate a clear historical record of engaging in a particular activity in order to assert tribal powers of self-government over that activity today. We believe, instead, that Rice, simply requires an inquiry to determine whether tribal self-government over a general subject area has historically been statutorily divested. In the particular context of liquor transactions discussed in Rice, there was a unique federal-state-tribal legal relationship dating from colonial times and a specific statute conferring jurisdiction on the states to regulate the subject area. Thus, the Court was justified in finding a congressional divestiture of tribal self-government.

The legal tradition of tribal self-government is far different with regard to gaming. "There are vast histor-

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[10]When deposed, Professor Wallace acknowledged that his report covered an earlier time period than Dr. Bean's, and that he had "no reason to dispute" Dr. Bean's findings and conclusions as to Cahuilla tribal gambling since the end of the 18th Century, the time of Western contact. C.R. 91, EOR 548, 555.

ical differences in the manner that the United States has treated alcohol and gaming activities in Indian country," and "there is no specific or general federal law conferring authority on states to regulate gaming" on Indian reservations. H.Rep. 488, at 11-12. Thus, because the facts here are the opposite of those in Rice, the court below was fully justified in finding that raising tribal revenues by means of bingo games was a legitimate governmental activity, without the need for a comprehensive historical analysis of ancient Cahuilla gambling practices. If such an inquiry were required under Rice, every case involving tribal jurisdiction would be reduced to a battle of anthropological experts, quibbling over historical minutia.[11]. It would also call into serious question the many federal and state court decisions upholding tribal self-government in areas that were clearly not "traditional" tribal activities. See, e.g., Red Lake Band of Chippewa Indians v. Minnesota, 248 N.W.2d 722 (1976) (vehicle registration); Knight v. Shoshone and Arapahoe Tribes, 670 F.2d 900 (10th Cir. 1982) (zoning).

Finally in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. ____, 83 L.Ed.2d 1016, 1031 (1985), decided two years after Rice, the Court rejected as "unsound in principal and unworkable in practice" any analysis of state governmental authority based on notions of "historical tradition." Equally applicable in this context, the Court found that using a historical approach "prevents a court from accommodating changes in the historical functions of States" and "results in line drawing of the most arbitrary sort." Id. at 1029. Based on Garcia, and the discussion above, we believe that a narrow reading of the "tribal tradition" analysis in Rice, as provided by the court below, is both necessary and appropriate.

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[11]To accept appellants' argument would forever relegate Indians to the status of dip-net fisherman, living in tepees and selling baskets by the side of the road. Moreover, it would negate all of the federal legislation of the last twenty years directed at making Indians economically self-sufficient.

II. THE COMMON LAW BALANCING TEST CANNOT BE APPLIED TO GRANT APPELLANTS JURISDICTION IN THIS CASE

A. Absent Specific Congressional Authorization, States Have No Jurisdiction Over Indians

In no case has this Court ever authorized the direct assertion of state jurisdiction over a tribe on its reservation in the absence of a treaty or statute expressly conferring such authority. Here, however, the appellants ask the Court to ignore this immutable principle of federal Indian law and to grant them jurisdiction though the application of a federal common law balancing test. Although common law principles have been applied to give states jurisdiction over non-Indians on the reservation, they have never been applied where, as here, the state seeks jurisdiction over the tribe itself. As this Court has said, "state laws are generally not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply." McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 170-171 (1973). This Court continued in McClanahan by stating that "cases applying the Williams [common law balancing] test have dealt principally with situations involving non-Indians." Id. at 179. The argument advanced by appellants ignores the critical distinction which this Court has preserved regarding the applicability of state laws to Indians, as opposed to non-Indians, on the reservations. White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 144-45 (1980). It also ignores the basic principle that "tribal sovereignty is dependent on and subordinate to only the Federal Government, not the States." Colville, 447 U.S. at 154.

Although in the past 150 years the absolute barrier to state jurisdiction found in Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832), has been modified in some respects, this Court has uniformly held that a state lacks jurisdiction over Indians in Indian country in the absence of an Act of Congress expressly conferring such jurisdiction. McClanahan, 411 U.S. at 168; see also

Williams v. Lee, 358 U.S. 217, 220 (1959); White Mountain, 448 U.S. at 144, 151, 252; Montana v. Blackfeet Tribe of Indians, 471 U.S. __, 85 L.Ed. 2d 753, 759 (1985).

In this case, the State is asserting jurisdiction over the activities of tribes on their reservations.[12] However, "there is no specific or general Federal law conferring authority on States to regulate gaming activity within Indian country." H.Rep. 488 at 11-12; Cabazon, 793 F.2d at 904, n.7.Because Congress has not expressly granted such jurisdiction, this effort is barred under the basic principles espoused in McClanahan and its progeny.[13]

B. Public Law 83-280 Bars The Application of Federal Common Law

The appellants have correctly noted that "Congress can 'preempt' or displace the [federal common law] balancing test by enacting legislation defining state jurisdiction over Indian reservations." App. Br. 11. Congress has, in fact, done so by the enactment of Public

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[12]Appellants raise for the first time in their brief the suggestion that the tribes' non-Indian employees may be regulated by the state, even if the tribal activities are immune from state jurisdiction. However, tribal employees share the tribes' immunities. Davis v. Littell, 398 F.2d 83 (9th Cir., 1968), cert. den. 393 U.S. 1019 (1969). Moreover, because this issue was not raised or adjudicated in the lower courts, the Court need not address it here. Cardinale v. Louisiana, 394 U.S. 437 (1969).

[13]The McClanahan court, at 167-168, specifically distinguished cases relied upon by appellants herein such as Organized Village of Kake v. Egan, 369 U.S. 60 (1962), and Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973), saying that these cases involved non-Indians, off-reservation activities of a tribe, or off-reservation Indians not possessing the "usual accoutrements of tribal self-government."

Law 83-280, 67 Stat. 588 (1953), 18 U.S.C. §1162, 28 U.S.C. §1360.

This Court has recently held that PL-280 "was intended to replace the ad hoc regulation of state jurisdiction over Indian country with general legislation, providing for all effected States to come within its terms." Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, 476 U.S. _____, 90 L.Ed.2d 881, 890 (1986). This Court found that North Dakota's statutes were preempted because they were inconsistent with PL-280. In enacting PL-280, Congress determined the full extent to which the State of California could exercise its jurisdiction on Indian reservations. PL-280 made state law applicable to civil causes of action, but did not make general state civil regulatory laws applicable on the reservation and did not extend jurisdiction over the activities of the tribes themselves. Where, as here, Congress has acted statutorily, the states cannot seek to expand their authority through amorphous principles of "federal common law." Milwaukee v. Illinois, 451 U.S. 304, 314-315 (1981); 19 Wright, Miller & Cooper, Federal Practice and Procedure, Jurisdiction §4514, 220 (1982 ed.). To hold otherwise, would permit the Court to ignore Congress' determination and would render PL-280 a nullity. This would be particularly inappropriate here, in that Congress is recognized to exercise plenary authority over Indian affairs, "not subject to be controlled by the judicial department of the government." Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903).

Directly on point is Kennerly v. District Court, 400 U.S. 423 (1971). Faced with Montana's argument that it could assert jurisdiction over a reservation without complying with the statutory requirements of PL-280, this Court found that argument unpersuasive, because the state's attempted assumption of jurisdiction was not in compliance with the PL-280, a "governing Act of Congress." 400 U.S. at 427. Similarly appellants here seek to obtain jurisdiction greater than they obtained under PL-280, through common law principles which would be inconsistent with PL-280. As this Court did in Kennerly,

McClanahan, and Three Affiliated Tribes, the Court should find that PL-280 statutorily bars any such effort.[14]

Appellants incorrectly argue that giving PL-280 such preemptive effect would result in PL-280 states having less jurisdiction than non-PL-280 states. App. Br. 9. This Court has never upheld state jurisdiction over tribes or reservation Indians if not obtained in compliance with PL-280 or some other applicable federal statute. Rice, 463 U.S. 713; McClanahan, 411 U.S. at 178; Kennerly, 440 U.S. at 424-25. Therefore, the "anomaly" complained of by the appellants is simply non-existent.

III. ASSUMING ARGUENDO THAT FEDERAL COMMON LAW APPLIES, STATE JURISDICTION CANNOT BE AUTHORIZED HERE

In applying the federal common law to assertions of state jurisdiction over non-Indians on the reservation, the Court has looked to what it has called the two "independent but related barriers" of federal preemption[15] or infringement upon the right of tribal self-government.[16] These two barriers "are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable." Ramah, 458 U.S. at 837. It is in applying the "infringement" and "preemption" tests to assertions of state jurisdiction over non-Indians on the reservation that this Court engages in a particu-

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[14]Although the court below did not find state jurisdiction preempted by federal law, it did not have the benefit of this Court's analysis of PL-280 in Three Affiliated Tribes.

[15]See, e.g., McClanahan 411 U.S. 164; White Mountain, 448 U.S. 136; Ramah Navajo School Board v. Bureau of Revenue, 458 U.S. 832 (1982).

[16]See, e.g., Williams v. Lee, 398 U.S. 217 (1959); Fisher v. District Court, 424 U.S. 382 (1976).

larized inquiry and balances the respective interests of the federal, tribal, and state governments. White Mountain, 448 U.S. at 145; Ramah, 458 U.S. at 838. In the balancing process, this Court has uniformly held that the deeply engrained notions of Indian sovereignty and self-government must serve as the "backdrop" against which vague federal enactments must be measured. White Mountain, 448 U.S. at 143; Ramah, 458 U.S. at 837; Rice, 463 U.S. at 719.

In arguing that the federal common law supports state jurisdiction, appellants urge this Court to ignore every federal court decision on the issue of Indian bingo and follow two state court decisions. Those decisions, Penobscot Nation v. Stilphen, 461 A.2d 478 (Me.) appeal dismissed 464 U.S. 923 (1983).[17] and Oklahoma v. Seneca-Cayuga Tribe, 711 P.2d 77 (Okla. 1985)[18] are readily

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[17]Although the Maine Supreme Court reached an opposite result, it did so on the basis of the Maine Indian Claims Settlement Act of 1980, 25 U.S.C. 1721-1735 and Maine legislation implementing that Act. 461 A.2d at 487, 489. That court recognized that the relationship between Indians in Maine and the State was unlike that which exists anywhere else in the United States and specifically distinguished the Seminole and Barona cases from its holding on the basis of this Act. That court also found it important that Maine law generally prohibited the playing of bingo. Finally in discussing the federal common law, the court premised its analysis on a flawed belief that tribal sovereignty over non-Indians had been divested and applied only to internal tribal matters. Id. at 487. Therefore, the decision's rationale can be of no persuasive value herein.

[18]Since the Oklahoma Supreme Court decision was rendered, two federal district courts in Oklahoma have reached a contrary conclusion and found the state to be without jurisdiction over tribal bingo activities. See n.1, above. In the most recent, Seneca-Cayuga Tribe of Oklahoma v. Oklahoma, Nos. 85-C-639-B and 86-C-393-B (N.D. Okla., June 5, 1986), 13 Indian L.Rep.

(footnote continued)

distinguishable from the instant case and do not provide persuasive reasoning for this Court to follow.

A. Federal Law Preempts State Jurisdiction Over The Tribes' Bingo Enterprises

Even if the Court should conclude that it is appropriate to apply the "balancing test" in this case, it should find that the attempted assertion of state jurisdiction has been preempted by federal law.

In Indian affairs, principles of preemption developed in other areas of the law are "generally unhelpful." White Mountain, 448 U.S. at 143. The cases have rejected a narrow focus on congressional intent, or a requirement of an express congressional enactment in order to find a state law preempted. Mescalero, 462 U.S. at 334. Instead, when federal regulatory schemes and the policies underlying them would be impaired by state action, state jurisdiction may be preempted. Three Affiliated Tribes,

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[18](footnote continued)
3103, the federal district court concluded that the State Supreme Court decision was "contrary to federal law." Id. at 3104. The court quoted Carol Goldberg-Ambrose, the noted authority on PL-280, who had termed the Oklahoma Supreme Court's reasoning "obscure and confused." Id. The federal court held that the State had no "residuary jurisdiction," for the limits of state jurisdiction over Indians were established by PL-280 which "preempts and reserves to the Federal government or the Tribe jurisdiction not so granted." Id. at 3105. Because the state law was being applied to Indian conduct, as here, the Oklahoma Supreme Court improperly "'allowed state jurisdiction to seep into the area preempted by PL-280.' Goldberg-Ambrose supra." Id. The state court also overvalued "ill-defined" state interests while erroneously giving "little or no weight to Tribal and Federal interests." Id. Thus, the federal court enjoined the enforcement of the Oklahoma Supreme Court decision. The Tribes urge this Court to adopt this analysis as persuasive.

90 L.Ed.2d at 892; White Mountain, 448 U.S. at 144-45. Because state jurisdiction in Indian country restricts tribal self-government, "broad preemption of state laws in Indian country has been consistently recognized as a necessary implication from the federal policy protecting tribal sovereignty." Cohen, Federal Indian Law 278 (1982 ed).

The Tribes contend that state regulation of tribal bingo has been preempted by federal law, by a comprehensive federal regulatory scheme and federal policy. These will be discussed in detail in this section to demonstrate to the Court that, even if the preemption test were applicable, the Tribes would prevail. Thereafter, we will address the "infringement" test, and demonstrate that under either test, the federal and tribal interests outweight those of the state. To avoid repetition, a single analysis of the applicable state interests and the balancing of those interests will be presented in the "infringement" section.

1. State Law is Preempted by Current Federal Indian Policy

Central to the proper disposition of this case is the fact that Indian tribal bingo is actively sanctioned and promoted under current federal Indian policies, which encourage and foster tribal self-government and promote reservation economic development. 783 F.2d at 904; see Mescalero, 462 U.S. at 324. The federal government's continued commitment to these goals was recently emphasized by President Reagan. J.A. 220-228.

The court of appeals correctly concluded that tribal bingo games were "recognized as one way to support this policy," 783 F.2d at 904, relying on a March 2, 1983 policy directive of the Assistant Secretary of the Interior (tribal bingo "should be protected and enhanced"), J.A. 243-44, and the affidavit of Theodore Krenzke, Director of Indian Services, Bureau of Indian Affairs, on behalf of the United States Department of the Interior (tribal bingo

furthers federal goals of tribal self-determination and economic self-sufficiency). Id. at 905; J.A. 218-220.[19]

Current federal policy with respect to tribal bingo activities has also been clearly expressed in recent congressional hearings on H.R. 1920, 99th Cong. 1st Sess (1985) and related Indian gaming legislation.[20] In hearings before the House Interior Committee in November 1985, the Interior Department witness testified that that Department would oppose "state control over bingo because it would drive Indian bingo out of business" while the law enforcement risks are "manageable and do not warrant state regulation." Testimony of Marian Blank Horn, Principal Deputy Solicitor, Department of the Interior, November 14, 1985. More recently, a Department of Justice official testified in support of proposed legislation that would leave tribal bingo activities under federal and tribal jurisdiction. Statement of Victoria Toensing, Deputy Assistant Attorney General, Criminal Division, Before the Senate Select Committee on Indian Affairs, June 17, 1986.[21]

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[19]Because the Department of the Interior is statutorily charged with the formulation of Indian policy and the management of Indian affairs, 25 U.S.C. §§1, 2, 2a, 13, its determinations are entitled to great weight and substantial deference. Udall v. Tallman, 380 U.S. 1, 16 (1965); People, State of California v. U.S., 561 F.2d 731, 733-34, and n.4 (9th Cir. 1977).

[20]H.R. 1920 was passed by the House of Representatives on April 21, 1986 and sent to the Senate. 131 Cong. Rec. H2012. The Senate Select Committee on Indian Affairs favorably reported the bill, as amended, to the full Senate on September 17, 1986. Senate action is now pending.

[21]Despite this fact, the appellants persist in citing outdated 1984 testimony which they erroneously claim shows federal opposition to tribal bingo. App. Br. 26, n.16.

H.R. 1920 itself is also significant in that it expressly rejects any notion that states have or should have any regulatory authority over tribal bingo activities.[22] After recognizing the economic benefit to tribes from bingo, Representative John McCain (R-Az), a co-sponsor of the bill, noted that

> Traditionally, states and Indian Tribes have been adversaries, as our committee hearings clearly demonstrated. State witnesses wanted state jurisdiction, regulation, enforcement and taxation. However, no state witness testified that the State had a responsibility to Indian Tribes for their health, welfare or economic development.

132 Cong. Rec. H2021 (daily ed. April 21, 1986); see generally, United States v. Kagama, 118 U.S. 375 (1866).

As the foregoing demonstrates, current federal Indian policy supports tribal attempts to become economically self-sufficient through bingo, in much the same way that state governments are turning to lotteries and other forms of gaming to raise revenues. Federal policies such as these were found to be relevant in preempting state jurisdiction over non-Indians in White Mountain, 448 U.S. at 149; Ramah, 458 U.S. at 840; and Merrion, 455 U.S. at 137. These policies should carry even more preemptive weight when the activities of the tribes themselves are at issue.

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[22] Although H.R. 1920 has only been passed by the House and by the Senate Committee at this time, recently this Court quoted extensively from and was guided by the factual record in a Senate Committee Report on legislation that was never enacted. Walters v. National Association of Radiation Survivors, 473 U.S. _____, 87 L.Ed.2d 220, 234, n.10 (1985). Similar deference is warranted here, where the findings are based on extensive Committee hearings. H.Rep. 488, at 24.

2. State Jurisdiction is Preempted by the Exercise of Federal Statutory and Regulatory Authority

In addition to the policies discussed above, the federal government has also exercised significant oversight responsibilities with respect to tribal bingo. Contrary to appellants' contentions that the Secretary of the Interior plays no role in these operations, the Secretary has exercised substantial regulatory authority over tribal bingo activities. On April 7, 1986, the Assistant Secretary for Indian Affairs issued and distributed to every tribal government in the United States detailed guidelines requiring departmental review and approval of tribal bingo management contracts. Copies of these materials are appended at pages 61a to 70a of Appellees' Motion To Dismiss Appeal. These guidelines require, inter alia, an FBI investigation and background check on all non-Indian bingo management personnel for the express purpose of prohibiting criminal infiltration into any tribal bingo enterprise. These guidelines were promulgated pursuant to the Secretary's authority, under 25 U.S.C. §81, to approve all contracts with Indian Tribes.

In addition to these guidelines, the Secretary of the Interior has been extensively involved in regulating tribal bingo activities. He has approved tribal bingo ordinances, including those of the Cabazon and Morongo Bands, see Appendices A and B, as well as the Morongo bingo management agreement. J.A. 216. The Secretary has also approved leases of tribal land for gaming purposes under his authority to regulate the use of tribal lands pursuant to 25 U.S.C. §§177, 415, and 25 C.F.R. Part 162. See H.Rep. 488 at 13. Pursuant to his authority under the Indian Finance Act, the Secretary has issued loan guarantees and federal grants of approximately eight million dollars for the purpose of constructing facilities for Indian gaming on reservations. See 132 Cong. Rec. S12017; see also Mashantucket Pequot Tribe v. McGuigan, 626 F.Supp. at 246. Also, at 25 C.F.R. § 11.58, the Secretary has made the violation of tribal gaming laws by

an Indian punishable in the federal Courts of Indian Offenses.

Finally, additional preemptive weight is provided by the Mission Indian Relief Act, 26 Stat. 712 (1891). This legislation was passed by Congress to establish reservations for the Mission Indians in California. Both reservations herein were established under this Act. J.A. 61, 80. Section 3 of the Act provides that the reservations so established would be held in trust "for the sole use and benefit of the band or village" for which they were established. Such exclusivity language preempts the operation of state law on the reservations. McClanahan, 411 U.S. at 176, n.15; United States v. Farris, 624 F.2d 890, 894 (9th Cir.) cert. denied 429 U.S. 1111 (1980).

The cumulative effect of these preemptive factors closely parallels those relied on in Mescalero. As in that case, the Secretary's extensive and direct involvement with the tribes in the field of bingo preempts conflicting state jurisdiction. As noted there, it would have been "highly unlikely" for the Secretary to have "established, financed, and participated" in these activities if the state were "free to nullify the entire arrangement" 462 U.S. at 340. In addition, the Court found that in that case state jurisdiction would undermine reservation self-government and threaten the federal commitment to tribal self-sufficiency and economic development. Id. at 341. These same factors apply with equal, if not greater, preemptive force in the case now before the Court.

B. State Jurisdiction Unlawfully Infringes on the Right of Tribal Self-Govermment

In their zeal to obtain a reversal in this case, the appellants have seriously misrepresented both the specific holding of the court below, and the grounds on which that decision was based. They state: "according to the court, the tribes have a 'sovereign' interest in raising revenues - regardless of the form of 'activity' by which

the revenue is raised...." App. Br. 13 (emphasis added).[23] In fact, the court of appeals did not state or suggest that tribes had a right to raise revenues by any means whatsoever. The court held that under its "particularized inquiry" into the specific facts and interests asserted in this case, the tribes had a strong governmental interest in raising revenues by means of bingo games, and that this was a legitimate governmental interest regardless of whether the tribes had raised revenues in this precise manner in the past. 793 F.2d at 906.

The appellants also incorrectly state that this result was based on an impermissible use of "tribal sovereignty as an absolute bar to State jurisdiction, rather than as a 'backdrop' in analyzing the preemption issue." App. Br. 13. What the appellants have ignored, however, is the fact that the lower court stated that its decision was based on "interference with reservation self-government," 783 F.2d at 904, 906, one of the two independent but related barriers to the assertion of state jurisdiction on an Indian reservation.

Although the tribes believe that the balancing test is not required because the appellants are not seeking to regulate the activities of non-Indians, the court of appeals conducted a particularized inquiry into the federal, tribal and state interests involved here. The court concluded that the federal and tribal interests outweighed that of the state. For the reasons discussed below, that ruling was correct and should be affirmed if this Court finds that the balancing test applies in this case.

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[23] Later, they state ominously that "[u]nder the Ninth Circuit view, Indian tribes would have a sovereign right to market any commodity or contraband to non-Indians, no matter how much such marketing is outside that tribal tradition or illicit under state law." Id. at 20. While such hyperbole certainly grabs the reader's attention, it bears little serious relationship to the holding of the court below, which neither requires nor presages any such result.

1. The Federal and Tribal Interests Are Strong

Above, at pages 22-26, we have discussed the interests of the federal government that support and promote these tribal bingo enterprises. We need not repeat them here, other than to note that the court of appeals found these federal interests in support of tribal bingo to be strong. 783 F.2d at 905.

The interests of the tribes mirror those of the federal government, and are equally compelling. As the court below found, these games are the sole source of tribal revenues and the major source of employment on the Morongo and Cabazon reservations. Id. Without the revenues provided by these activities, the tribes would have no funds to operate their governments or provide services to their members. Id. At issue here, then, is the literal survival of these two small Indian tribes.

In recent years, the Court has shown an increasing appreciation for the need of tribal governments, like all governments, to raise revenues for essential programs and services. In Colville, the Court characterized the power to tax as "a fundamental attribute of sovereignty." 447 U.S. at 152. Two years later, it explained that this was so "because it is a necessary instrument of self-government...[which] derives from the tribe's general authority, as sovereign, to control economic activity within its jurisdiction." Merrion, 455 U.S. at 137. In Mescalero, the Court found the state could not assert jurisdiction over non-Indian sportsmen on the reservation, at least in part because such jurisdiction "would threaten Congress' overriding objective of encouraging tribal self-government and economic development" by terminating a tribal enterprise that "generates funds for essential tribal services and provides employment for members who reside on the reservation." 462 U.S. at 341. Most recently, the Court recognized that tribes "can gain independence from the Federal Government only by financing their own police force, schools and social programs." Kerr-McGee Corp. v. Navajo Tribe, 471 U.S. __, 85 L.Ed. 2d 200, 205 (1985).

The court of appeals found that raising revenues by means of tribal bingo was a legitimate governmental function exercised by these tribes.[24] That conclusion was fully consistent with the interests of the federal government, which seeks to make tribes less dependent on federal funds, and the cases quoted above, which recognize revenue generation as an essential and vital element of tribal self-government. As a result, the court was correct in finding that the tribal interests involved in this case were "compelling." 783 F.2d at 905.

2. The State Interest Is Weak

By comparison, the interest of the appellants in prohibiting tribal bingo activities is speculative and therefore weak. The state relies solely on one claimed interest: preventing the potential for organized crime involvement in the tribal games. As the court below noted, this is a legitimate concern. 783 F.2d at 904. However, as this Court has noted, legitimate state concerns must give way in the face of overriding federal and tribal interests. Three Affiliated Tribes, 90 L.Ed.2d at 895. This is such a case.

It must be recognized that we are dealing here solely with a potential and not an actual threat. After extensive hearings, the House Interior Committee found no evidence of organized crime in any Indian bingo enterprise anywhere in the country. H.Rep. 488 at 10. In this case, appellants stipulated to the fact that they are not alleging any organized criminal involvement in the Cabazon or Morongo enterprises. J.A. 66, 84.

Second, and more important, the appellants fail to recognize that the tribes and the federal government

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[24] We doubt that the State can dispute this general proposition, in view of the fact that California is raising hundreds of millions of dollars annually by actively encouraging its citizens to gamble on the new State lottery.

share a substantial interest in keeping the tribal bingo games free from criminal involvement. To this end, the federal government brings an impressive array of resources which it can use to prevent or prosecute criminal involvement in tribal bingo activities. E.g., 15 U.S.C. §1175; 18 U.S.C. §§483; 1163; 1955; 1961 et. seq. The federal government has shown no hesitancy to use these resources against criminal gambling activities on Indian reservations. United States v. Dakota, 796 F.2d 186 (6th Cir. 1986); United States v. Farris, 624 F.2d 890 (9th Cir. 1980); United States v. Blackfeet Tribe, 364 F.Supp. 192 (D.Mont. 1973).[25] To guard against any possible criminal infiltration, the Secretary of the Interior also requires an FBI background investigation of all individuals with ownership or managerial interests in bingo management agreements.

In addition, the tribes are able to effectively regulate these activities on a day-to-day basis. Without any basis in fact, the appellants contend that their interest is great because the tribes cannot "adequately handle the law enforcement problems arising when hundreds of non-Indians enter the reservation to play the games." App. Br. 25. The Court rejected a very similar argument in Mescalero. 462 U.S. at 342, n.27. Moreover, the contention merely underscores the appellants' misunderstanding of the activities in question. At issue here are people out for an evening's entertainment to play bingo, not drug-crazed motorcycle outlaws bent on mayhem and destruction. The appellants' own undercover agent described the players on a typical night at the Cabazon Reservation in these terms:

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[25]These cases involved illegal casino gambling, or the use of prohibited gambling devices. Because of the current federal policies supporting tribal bingo as a legitimate means of raising revenues, the Department of Justice has never sought to prohibit or prosecute a tribal bingo enterprise.

> On row 5, on the front left side were a middle-aged Latin couple, who were later joined by two young Latin males. These men had to have the game explained to them. The middle table was shared with a senior citizen couple. The aisle table had 2 elderly women, 1 in a wheelchair, and a middle-aged woman. . . . A goodly portion of the crowd were retired age to senior citizens.

J.A. 176. The "law enforcement problems" posed by such people are not substantial, and in over five years of operation, the Cabazon Band has not experienced a single serious criminal incident involving a patron at its bingo parlor or card room. The experience at Morongo has been identical. Nonetheless, both the Cabazon and Morongo Bands maintain sizeable security forces in and around their tribal enterprises. Additionally, in June, 1986, the Secretary of the Interior commissioned Cabazon Security Chief Bruce James as a Deputy Special Officer, with complete federal police powers over a number of southern California Indian reservations, including Cabazon and Morongo.[26] His presence will provide additional protections against any possible criminal involvement in the tribal bingo activities.

The State's interest here is also relatively weak because there are no "off-reservation effects that necessitate State intervention." Mescalero, 462 U.S. at 342. This is not a case like one involving fireworks, Marceyes, or alcoholic beverages, Rice, in which a commodity can easily be taken off the reservation and cause bodily harm to members of the general population. Like the fishing and hunting activities in Mescalero, the bingo games are confined solely to the reservations, and

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[26]The commission and position description outlining his rights and responsibilities are attached hereto as Appendix D, and show Officer James' authority to investigate, apprehend and arrest violators of federal, tribal, state and local laws on these reservations.

there are simply no off-reservation impacts caused by these activities.

The contention that California's general gambling policies are frustrated or undermined by the operation of the tribal bingo games is simply a make-weight argument and finds no basis in the record. Although appellants contend that California's "common law" regards gambling as a general vice, they well know there is no "common law" with respect to gambling in California; gambling is regulated entirely by statute. Monterey Club v. Superior Court, 119 P.2d 349, 358 (1941); People v. Harris, 12 Cal. Rptr. 916, 919 (1961). In addition, California's general gambling policies are not implicated in this case because it does not deal with gambling in general. It involves only bingo and three specific card room games: activities that are permitted under state law and widely played by the people of California. Finally, despite its pious pronouncements, it is important to note that California not only makes commercial gambling widely available to its residents, through race tracks and card rooms, but it is now itself in the gambling business, by operation of the new State Lottery. Thus, its argument against tribal bingo based on "moral grounds," App. Br. 29, is somewhat hypocritical.

In Mescalero, this Court stated that "when a tribe undertakes an enterprise under the authority of federal law, an assertion of State authority must be viewed against any interference with the successful accomplishment of the federal purpose." 462 U.S. at 336. The court of appeals in this case carefully weighed the competing interests of the federal government and the tribes, on one hand, and the state on the other. After conducting its particularized inquiry, it concluded that the federal/tribal interests outweighed that of the state and that, therefore, application of the state and local bingo laws would unlawfully interfere with tribal self government. For the reasons discussed above, that judgment was correct and should be affirmed by this Court.

IV. PUBLIC LAW 83-280 DOES NOT AUTHORIZE STATE JURISDICTION OVER TRIBAL BINGO GAMES

In addition to their "federal common law" argument, the appellants contend that PL-280 authorizes them to assert state jurisdiction over tribal bingo games. App. Br. 33-41. The court of appeals rejected this argument below, 783 F.2d at 901-903, as has every other federal court which has considered the question. See cases cited at n.1, above. For the reasons discussed below, the Court should affirm the results of these cases and reject the appellants' argument.

A. PL-280 Did Not Confer State Jurisdiction Over the Tribes Themselves

First, PL-280 did not confer upon the states any jurisdiction over the governmental activities of the tribes. This Court stated, in Bryan, that "there is notably absent any conferral of state jurisdiction over the tribes themselves," 426 U.S. at 389, and reiterated this view in Three Affiliated Tribes, 90 L.Ed.2d 881, quoting Bryan and emphasizing that "[w]e have never read PL-280 to constitute a waiver of tribal sovereign immunity, nor found PL-280 to represent an abandonment of the federal interest in guarding Indian self-governance." Id. at 894.

This view is fully consistent with the purpose of PL-280, which was to benefit Indian people by providing an increased degree of state-financed law and order services on reservations lacking adequate law enforcement resources, Bryan, 426 U.S. at 379-80, and to provide state judicial forums and their rules of decision for the resolution of private legal disputes where tribal forums were unavailable. Id. at 383. PL-280 was not intended to affect total termination of the tribes, or to undermine or destroy existing tribal governments. Id. at 388. Instead, the statute was intended to subject individual Indians to state judicial proceedings, as criminal defendants or voluntary civil litigants. The comparison in Bryan of the language of the Termination Acts (state law "shall apply

to the Tribe and its members") with that of PL-280 mandates the conclusion that Congress clearly knew how to subject tribal governments to state jurisdiction, but did not intend to do so in PL-280. Id. at 390.

This analysis of PL-280 is further supported by two important principles of federal law. The first is the "eminently sound and vital canon" that ambiguities in federal statutes passed for the benefit of Indians should be resolved in favor of the Indians. Id. at 392 (and cases cited there). While the Court cannot disregard clear congressional intent, it has also recognized that it is "not obligated in ambiguous instances to strain to implement [an assimilationist] policy Congress has now rejected." Id. at 389, n.14. Where, as here, an "admittedly ambiguous" statute, id. at 392, can reasonably be interpreted in a manner which is consistent with "Congress' jealous regard for Indian self-governance," Three Affiliated Tribes, 90 L.Ed.2d at 893, it should be so construed.

In addition, where state law is made applicable to federal lands or activities on those lands by congressional enactment, those state laws must be construed and implemented in a manner consistent with overriding federal law and policy. James Stewart & Co. v. Sadrakula, 309 U.S. 94 (1940); King v. Gemini Food Services, Inc., 438 F.Supp. 964 (E.D. Va. 1976), aff'd. 562 F.2d 297 (4th Cir. 1977); Air Terminal Services, Inc. v. Rentzel, 81 F.Supp. 611 (E.D. Va. 1949); Sherick, State Jurisdiction Over Indians As a Matter of Federal Common Law: The Infringement-Preemption Test, 21 Arizona L. Rev. 85, 107-110 (1979). In construing PL-280 in Three Affiliated Tribes, the Court concluded that state "jurisdiction over Indian country was only lawful to the extent that it was consistent with Indian tribal sovereignty and self-government." 90 L.Ed.2d at 891. In the case at bar, the attempted assertion of state jurisdiction is clearly inconsistent with self-government of the tribes, and is contrary to express federal policies promoting tribal bingo. Thus, a finding that PL-280 did not grant either civil or criminal jurisdiction over these tribal activities is required.

Finally, it is important to note that the tribal governmental immunity from state jurisdiction under PL-280 does not allow Indian tribes to operate Las Vegas-style casinos, or traffic in narcotics, or operate reservation-based brothels with impunity. Such activities would either be subject to federal prosecution under applicable federal law, e.g., 15 U.S.C. § 1175; 18 U.S.C. §§ 1955, 1961, or the individual participants would be subject to state prosecution under the criminal provisions of PL-280. We are not arguing here that Indian tribes, or individual tribal members, are free to engage in criminal conduct under the guise of tribal self-government. Rather, we contend that PL-280 does not authorize the State of California to prohibit tribal activities that are in furtherance of federal Indian policy and, in fact, sanctioned by the Secretary of the Interior, and treat them as "criminal" activities because they differ in minor ways from the manner in which the State authorizes the same conduct. Congress intended no such result when it enacted PL-280.

B. PL-280 Did Not Grant Regulatory Jurisidiction to Apply State and Local Bingo Laws on the Reservations

Assuming, arguendo, that the Court finds that PL-280 was intended to subject tribal activities to state jurisdiction, the appellants have advanced no credible justification for the application of state and local civil regulatory bingo laws to the tribally-sponsored games. Such laws cannot be enforced in Indian country under PL-280.

1. PL-280 Properly Distinguishes Between Civil/Regulatory and Criminal/ Prohibitory Laws

The appellants have challenged the decision below, as well as Barona, Seminole, Mashantucket Pequot and Oneida, all of which have drawn a distinction between state civil and criminal jurisdiction under PL-280. In each case, based on Bryan, the courts found that PL-280 did

not authorize the state to impose its general civil regulatory law in Indian country and that the state bingo laws in question were civil/regulatory rather than criminal/prohibitory. The appellants argue that this distinction is unwarranted and unworkable. App. Br. 34-38. The distinction, however, is required under the terms of PL-280, and is a workable, commonly applied standard under many federal and state statutory schemes.

First, it is apparent from the face of PL-280 that Congress expressly divided its grant of jurisdiction into separate civil and criminal components: see 18 U.S.C. § 1162(a); 28 U.S.C. § 1360(a). Unlike the Termination Acts passed by the same Congress which broadly subjected some tribes and their members to all state laws, PL-280 was carefully crafted into two distinct parts. As a result, the court below, like this Court in Bryan, was entirely correct in distinguishing between state civil laws of a regulatory nature and state criminal laws which are prohibitory in intent.

The California Supreme Court has recognized and adopted precisely the same civil/regulatory criminal/prohibitory distinction under PL-280 as made by the court below. People ex rel. Department of Transportation v. Naegele Outdoor Advertising Company, 213 Cal. Rptr. 247 (1985), cert. denied ____ U.S. ____, 89 L.Ed.2d 570 (1986). In that case, the State's highest court determined that California could not regulate billboards located on Indian reservations by applying the California Outdoor Advertising Act.[27] In holding that PL-280 did not authorize the application of the state's billboard law on the reservation, the California Supreme Court cited Barona with approval, found that PL-280 gave the state

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[27]Like its bingo laws, the State's Outdoor Advertising Act authorized some billboards, Bus. & Prof. Code, § 5226; regulated them in certain ways, id. at § 5350, 5403, 5405; and included a criminal penalty for violations of the statutory scheme. Id. at § 5464.

jurisdiction only over private civil litigation, and concluded that the State could not apply its civil regulatory laws, like the Outdoor Advertising Act, on the reservation. 213 Cal. Rptr. at 253-54.

The distinction between civil/regulatory and criminal/prohibitory enactments is also routinely made in a wide variety of other federal and state contexts. For example, because the Assimilative Crimes Act, 18 U.S.C. §13, incorporates state criminal laws only, federal courts are commonly called upon to determine whether a particular state law is criminal/prohibitory or civil/regulatory in nature when reviewing prosecutions under the ACA. United States v. Rowe, 599 F.2d 1319, 1320 (4th Cir. 1979); United States v. Best, 573 F.2d 1095, 1098-1100 (9th Cir. 1978). In addition, under various state constitutions and statutes, state and local governments are frequently given the power to "regulate" a given activity, but not to "prohibit" it. State courts, therefore, have historically drawn this distinction in determining the propriety of state or local governmental action. See, e.g., City of Shreveport v. Belk, 258 So.2d 79, 80-81 (La. 1972); Blumenthal v. City of Cheyenne, 186 P.2d 556, 565-67 (Wyo. 1947).

Finally, various constitutional guarantees, such as those prohibiting compelled self-incrimination or double jeopardy, apply in criminal but not civil proceedings, requiring the courts to distinguish between the two in determining whether the protections apply. See United States v. Ward, 448 U.S. 242, 248-51 (1980); Helvering v. Mitchell, 303 U.S. 391, 399-405 (1938). Therefore, the appellants' claim that this distinction is arbitrary or unworkable is without merit. It is, in fact, required by the language and structure of PL-280, and represents a straightforward determination that federal and state courts routinely make in many contexts.

2. The Court Of Appeals Correctly Determined That California Bingo Laws Are Civil/Regulatory

In arguing that California's bingo laws are prohibi-

tory rather than regulatory, the appellants have simply misunderstood the fundamental distinction between "prohibition" and "regulation" of conduct. As succinctly put by the Supreme Court of Washington more than 50 years ago, after noting that the prohibition and regulation of the sale of liquor are entirely different things: "To prohibit the liquor traffic implies the putting a stop to its sale as a beverage, to end it fully, completely, and indefinitely." In contrast, regulation "implies that the sale of intoxicating liquor shall go on within the bounds of certain prescribed rules, restrictions, and limitations." Ajax v. Gregory, 32 P.2d 560, 563 (Wash. 1934). Because regulation of conduct involves prescribing limitations, regulation, by definition, necessarily involves some degree of prohibition. Blumenthal v. City of Cheyenne, 186 P.2d 556, 566 (Wyo. 1947). The two concepts, however, are analytically distinct. Therefore, when courts have been faced with statutory schemes similar to California's bingo laws, they have consistently held them to be regulatory and not prohibitory.

California state courts have done so under circumstances strikingly similar to those here. In In re Lawrence, 55 C.A.2d 491, 131 P.2d 27 (1942), the court was faced with reviewing a municipal ordinance which permitted pinball machines to be maintained in private homes and in certain specified "amusement zones" within the city, but proscribed their possession or use elsewhere within the municipality. The court clearly distinguished between "ordinances which prohibit entirely lawful businesses and occupations" and ordinances "which seek only to regulate such businesses." The court concluded that the pinball ordinance "is not prohibitory, but regulatory only." 131 P.2d at 31. Thus a statutory scheme very much like the state's bingo statute was held to be regulatory, and not prohibitory, in nature.[28]

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[28]Cases reaching the same conclusion involving other activities are legion. See, e.g., City of Shreveport v. Belk, 258 So. 2d 79, 81 (La. 1972); State v. Gregory, 70 P.2d 788, 791 (Wash. 1937); City of Butte v. Paltrovich, 75 P. 521, 522 (Mont. 1904).

Viewed in this light, the decision below that California's bingo laws are regulatory rather than prohibitory is certainly correct. The court below reached this conclusion on the basis of its earlier holding in Barona. In that case, the court carefully analyzed prior cases including United States v. Marceyes, 557 F.2d 1361 (9th Cir. 1977); Seminole; and Oneida. The Barona court correctly noted that there is no general prohibition against playing bingo in California; bingo games are sponsored by a broad range of groups and are widely played by the general population. 694 F.2d at 1189. The court also found that enforcement of state and local bingo laws against tribal games would be contrary to the present federal Indian policy of promoting tribal self-sufficiency. Id. at 1190. Finally, the court of appeals noted that the purposes to which tribal bingo proceeds went were "as worthy as the other charitable purposes to which bingo proceeds are lawfully authorized under the California statute." Id. On the basis of these findings, Barona held, and the court below affirmed, that bingo is not contrary to California public policy, that California bingo laws are regulatory rather than prohibitory, and that, therefore, under Bryan the state was not authorized under PL-280 to apply those laws on the reservations.[29]

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[29]The appellants suggest that the court of appeals improperly interjected a "public policy" test into its analysis of PL-280. The public policy test used there was adopted from the court's analysis of 18 U.S.C. § 1955 in United States v. Farris, 624 F.2d 890 (9th Cir.) cert. denied 419 U.S. 1111 (1980). In Farris, the court found that casino gambling was contrary to the public policy of Washington, and, therefore, was a violation of state law within the meaning of § 1955. Cf. U.S. v. Gordon, 464 F.2d 357 (9th Cir. 1972) (violation of non-penal state gambling regulations is not a violation of §1955). As applied in Barona and in this case, the public policy test is simply a shorthand statement as to whether a state's laws on a given subject are civil/regulatory or criminal/prohibitory

(footnote continued)

The appellants suggest that there are important distinctions between state authorized bingo, which they call "charitable," and tribal bingo, which they call "commercial." Yet, they do not explain the differences between the two.[30] Nor do they understand that tribal bingo is strictly regulated by the tribes under federal supervision, and is not "unregulated" gambling.

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[29](footnote continued)
within the meaning and intent of PL-280. Its use by the lower court is, therefore, consistent with the well-established principle that in interpreting statutes, the court must look not only to the particular words, but also to "the object and policy of the law." Stafford v. Briggs, 444 U.S. 527, 535 (1980).

[30]It is worth noting that the Commission on the Review of National Policy Toward Gambling, in whose findings the appellants place some reliance, stated:

> The Commission perceives little difference between "charitable bingo" and commercial bingo. Charitable bingo . . . is operated, however, like a commercial operation: it offers large cash prizes. . . and, most important, it is open to everyone, not just to members of the sponsoring organization. The Commission's survey has found that people play charitable bingo for the same reasons they might participate in commercial bingo: Bingo provides entertainment and a chance to make money. The charitable aspects of the game are relatively unimportant. For these reasons, the Commission recommends, for regulatory purposes, no distinction be made between charitable and commercial bingo.

J.A. 137-38 (emphasis added). The Commission Report, issued in 1976, was discussing bingo in general and did not discuss Indian bingo at all.

The appellants further argue that in state authorized bingo the stakes and profit potential are generally small, while tribal games "generate huge profits attractive to organized crime." App. Br. 25. There is absolutely no evidence in the record to support either of these allegations. While the prizes advertised and offered at the Cabazon and Morongo bingo establishments "sometimes exceed $250," J.A. 65, 83, the actual average jackpot per bingo game over a four-month period in early 1984 on the Cabazon Reservation was $184.89, well below the state limit of $250. At the same time, so-called "charitable" bingo operators were advertising $250 prizes on every bingo game played and cumulative cash giveaways of thousands of dollars. C.R. 84, Exhibits B through G, Supplemental Except of Record (SEOR) 50-55. Thus, the appellants' comparison of the stakes and profit potential of State authorized versus tribal bingo is based on pure speculation and nothing more.[31]

The appellants' additional contention that commercial gaming of any kind is contrary to California's public policy rings somewhat hollow in light of contemporary events. California horse bettors wagered more than $2 billion in 1982,[32] and more than 400 privately-owned poker clubs operate throughout the state where gamblers can bet unlimited amounts of money playing draw poker

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[31]Except for a $250 per game prize limit, the State does not regulate the amount of money that players can bet or that operators can make at State authorized bingo games. In 1979 the California legislature broadened the definition of bingo to include "pull-tab" devices that are now widely sold and offer potential $250 prizes on each card played. See People v. 8,000 Punchboard Card Devices, 142 Cal. App.3d 618 (1983). For a more complete analysis of "charitable bingo" and the vast sums of money involved therein, see Amicus Curiae Brief of the San Manuel Band of Mission Indians, filed in this case.

[32]California Horse Racing Board, Horse Racing in California: Statistical Report of Operations for 1982 at 1.

and panguingue and where the receipts and expenditures of the businesses are completely unregulated. Most recently, of course, the people of California approved a State Lottery that is awarding prizes worth millions of dollars, and on which Californians are betting a reported $8.6 million per day.

In United States v. Marceyes, 557 F.2d 1361, the court of appeals recognized that unless federal courts carefully distinguished civil/regulatory from criminal/prohibitory laws under the Assimilative Crimes Act, "a state could thereby enforce its regulatory system on the federal jurisdiction by making criminal any failure to comply with those regulations." This concern applies with even greater force with respect to the application of PL-280 on Indian reservations "because a state would thereby be able to implement all of its regulatory provisions" and "destroy the strong concept of tribal sovereignty carried on in such cases as [Bryan and Santa Rosa Band]." 557 F.2d at 1364.

The holding of the court below, like the earlier federal Indian bingo cases on which it relied, is fully consistent with this Court's analysis of PL-280 in Bryan and Three Affiliated Tribes and with current federal Indian policy promoting tribal bingo activities. On these bases, the Court should affirm the judgment below.

3. Appellants' Further Arguments Concerning PL-280 and Bryan Are Without Merit

Bryan v. Itasca County is an important cornerstone in the foundation of Indian tribal self-determination. It is not surprising, then, that the appellants seek to narrow its scope by arguing that it applies only to state taxation powers. Although the appellants contend that it was mere dicta, we believe that the Court meant what it repeatedly said in Bryan: that Congress, in enacting PL-280, did not intend to confer upon the states "general civil regulatory powers, including taxation." 426 U.S. at 390; 388 n.14; 387 and 384. In addition, the Court quoted

from and cited with approval Santa Rosa Band, a case not involving taxation, but the application of local building codes and zoning ordinances, giving further indication that a narrow reading of Bryan would be improper.

Appellants also argue that PL-280 permits the application of state regulatory laws on Indian reservations, unless specifically barred by federal law or regulation. App. Br. 36-37. This argument is merely an expanded version of the "negative implication" theory advanced by the State of Minnesota and flatly rejected in Bryan. 426 U.S. at 378-79.

The appellants also contend that a revisionist approach to PL-280 is warranted on the basis of previously unknown legislative history. App. Br. 37-38. This same argument has been made before, without success, United States v. County of Humboldt, 615 F.2d 1260, 1261-62 (9th Cir. 1980), and is simply incorrect. The 1953 Interior Department letter upon which appellants rely was clearly part of the record before the Supreme Court when it decided Bryan. J.A. 245-255. Thus, there is no newly discovered legislative history and no reasoned basis upon which to reconsider Bryan.

In light of the firm federal commitment to the goals of Indian self-determination and tribal economic self-sufficiency, it would be anomalous for the Court, in this case, to retreat from the position of support for effective tribal governments that it espoused in Bryan. Although that case involved taxation and this case involves bingo, the overriding concern is the same: protecting the economic security of fragile tribal governments from unwarranted state intervention. No persuasive argument has been advanced in this case that would justify any weakening of Bryan, and the Court should affirm the judgment of the court below.

V. STATE JURISDICTION IS NOT AUTHORIZED BY THE ORGANIZED CRIME CONTROL ACT

The appellants suggest that the Organized Crime Control Act (OCCA), 18 U.S.C. §1955, is relevant to this

case in two ways. They contend, first, that it demonstrates a federal policy favoring the application of state and local gambling laws on Indian reservations, a matter to be weighed in the Court's balancing of interests. App. Br. 41. In addition, they also appear to argue that it provides them with a statutory grant of authority to directly enforce state and local laws on the reservation - or at least to make arrests for purported violations. Id. at 42, n.26. In fact, neither of these contentions is correct.

First, current federal policies support tribal bingo, as discussed above at 22-26. There is nothing in the OCCA or its legislative history that states or suggests a federal policy to curtail the tribal activities at issue in this case. The legislative history does not mention Indian tribes at all. However, the OCCA expressly exempts:

> any bingo game... conducted by an organization exempt from tax under 26 U.S.C. §501(c)(3) if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

18 U.S.C. §1955(e). Significantly, this exemption applies whether or not a game conducted by a tax-exempt organization otherwise violates state or local law, and is therefore consistent with the limited objectives of the OCCA:

> It is intended to reach only those persons who prey systematically upon our citizens and whose syndicated operations are so continuous and so substantial to be of national concern, and those corrupt state and local officials who make it possible for them to function.

H.R. Rep. No. 1549, 91st Cong., 2d Sess. 4029 (1970); see also United States v. Thaggard, 477 F.2d 626, 631 (5th Cir., 1973).

In Barona, the Ninth Circuit compared the purposes for which tribes conduct bingo games with those of the broad spectrum of private organizations which California law allows to conduct bingo games. The Barona court found the tribal purposes to be "at least as worthy as the other charitable purposes" for bingo proceeds under California law. "Although the Barona bingo operation does not fully comply with the letter of the statutory scheme, it does at least fall within the general tenor of its permissive intent." 694 F.2d at 1190. The uses to which the tribes in this case put their bingo proceeds are identical to those in Barona. Thus, just as the tribal bingo in Barona was found to be consistent with the tenor of California's bingo laws, so too is tribal bingo consistent with the federal policy toward non-profit bingo as expressed in the OCCA exemption.

Moreover, in assessing federal policy toward tribal bingo, the actions of the federal government are more persuasive than the arguments of the appellants. Despite the fact that various tribal bingo enterprises have been in operation since 1980, and that there are more than 80 such games now in operation around the country, the federal government has never attempted to enforce the OCCA against a tribal bingo enterprise. This fact alone belies any contrary interpretation of the OCCA by the appellants.

The appellants also raise a number of substantive arguments concerning the proper interpretation of §1955 and their authority to enforce it directly against the tribes. App. Br. 41-42. These arguments are not properly presented here, however, for the appellants lack standing to raise them and the issues are not ripe for review.

The OCCA is a federal criminal statute, the violation of which must be prosecuted by the United States in a federal criminal proceeding. United States v. Dakota, 796 F.2d 186 (6th Cir. 1986); see Johnson v. Yellow Cab, 321 U.S. 323 (1944); 18 U.S.C. §3231. The OCCA does not delegate enforcement authority to the states, and therefore, the states have no authority to enforce the

OCCA directly against the tribal activities at issue in this case. Dakota, 796 F.2d at 188-89; see Hancock v. Train, 426 U.S. 167 (1976); E.P.A. v. California Water Resources Control Board, 426 U.S. 200 (1976). As a result, the appellants simply have no standing to argue that the tribal enterprises at issue here violate the OCCA. Those questions must be raised and resolved in a federal criminal proceeding brought by the United States, such as Dakota or United States v. Farris, 624 F.2d 890.

The appellants also argue that even if they cannot enforce the OCCA, they can make arrests for its purported violation. However, this contention is not ripe for review here. Babbitt v. United Farm Workers, 442 U.S. 289 (1979). When the appellants actually made arrests in 1983, which precipitated the filing of this case, they were only for alleged violations of a local ordinance. J.A. 28. At no time in the district or circuit court proceedings did the appellants claim to have or threaten to exercise the power to enter these Indian reservations and make arrests under §1955; the first place in which that threat appears is footnote 26 of the Appellants' Brief to this Court. Thus, there is no basis in the record for a finding that there is an actual case or controversy as to that issue. Boyle v. Landry, 401 U.S. 77 (1971). Even if there had been a prior threat, it could not be deemed to be credible in view of the fact that the federal government has never prosecuted a tribal bingo enterprise for violation of the OCCA. See Ellis v. Dyson, 421 U.S. 426 (1975).

Finally, even if the Court should address the appellants' argument on the merits, it should affirm the ruling of the court below. In this case, as in Barona, the court of appeals relied upon its earlier decision in United States v. Farris, 624 F.2d 890. In Farris, the court had held that the OCCA applied to gambling activities that violated state law and were contrary to the state's public policy. Id. at 895-96. It thus made coextensive the tests for direct application of state law under PL-280 and application of federal law under §1955. As a result, the court below concluded that the tribal bingo games did not violate the OCCA. 783 F.2d at 903. For the reasons dis-

cussed above, at 38-42, that analysis and conclusion were correct, and should be affirmed by the Court.[33]

VI. RIVERSIDE COUNTY HAS NO JURISDICTION OVER THE CABAZON CARD ROOM

In addition to its tribal bingo parlor, the Cabazon Band also owns and operates a tribal card room on its Reservation, in which three specific card games are permitted. The legal status of these particular games under California law differs from that of bingo, thus warranting a separate discussion here.

Under California Penal Code § 330, gambling on 12 specified games and on any "banking and percentage game" is expressly prohibited. California courts have repeatedly held that gambling activities involving card games not expressly prohibited under that statute are permissible as a matter of State law. In Re Hubbard, 41 Cal. Rptr. 393, 399 (1964); Monterey Club v. Superior Court, 119 P.2d 347, 349 (1942). Although stud poker is expressly prohibited under § 330, draw poker, variants of draw poker including "low-ball," and panguingue ("pan"), are not prohibited under § 330, or any other statute and are, therefore, permitted under California law. See, e.g., People v. Philbin, 123 P.2d 159, 160 (1942) (draw poker and low-ball are not unlawful); People v. Ambrose, 265 P.2d 191, 194 (1953) (panguingue is not a "banking or percentage game"). As a result, a large commercial card room industry has developed and flourishes in

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[33] Although the 6th Circuit, in United States v. Dakota, viewed the Farris analysis of §1955 with disfavor, it did not support the position of the appellants here. Dakota held that the state has no authority to directly enforce the OCCA against tribal gaming activities. 796 F.2d at 188-89. Moreover, it did not question the interpretation of PL-280 advanced in Bryan, Barona, or this case, as applied to state jurisdiction over tribal bingo activities. Id.

California,[34] with more than 400 card rooms identical in every respect to the Cabazon card room. Where such games are played, the State does not regulate pot sizes or limit the amount of money that players can wager, win or lose, J.A. 83-84, and advertising of such games through print and electronic media is authorized. 66 Ops. Cal. Atty. Gen. 360 (1983).

Local governments may regulate these permissible gambling activities through licensing or taxation, Monterey Club v. Superior Court, 119 P.2d at 351, or may prohibit these activities altogether, In re Farrant, 181 Cal.App.2d 231 (1960), as Riverside County has done. However, the appellants concede that even if a county prohibits these games by ordinance, other units of local government within that county are free to enact their own local ordinances, permitting the games to be played, as two cities have done within Riverside County. J.A. 62-63.[35] The appellants have neither challenged these cities' authority to do so nor attempted to enforce the County ordinance against these games. Id.

Despite the fact that every other unit of local government within the State of California and Riverside County can decide for itself whether or not to permit these particular card games, the appellants argue that the Cabazon Band should be deprived of this element of self-government. In Bryan, the Court rejected this argument and recognized the devastating impact on tribal governments that would result from subjecting them to general state and local regulatory control which "might

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[34]The city of Gardena, California, for example, proudly bills itself as "The Poker Capital of the World." C.R. 59, Exhibit D, SEOR at 7.

[35]Since the 1984 factual stipulation entered in this case, the Cabazon Band has learned that the city of Blythe, as well as Lake Elsinore, permits commercial gambling on draw poker, low-ball and pan. There are four card rooms in Blythe.

relegate tribal governments to a level below that of counties and municipalities, thus essentially destroying them . . . ." 426 U.S. at 388-89, n.14. This is precisely the situation presented here.

This Court's citation to and reliance on Santa Rosa Band of Indians v. Kings County, 532 F.2d 635, in Bryan is also instructive on this point. In Santa Rosa Band, the court of appeals held that PL-280 did not subject reservation Indians to local jurisdiction. Instead, the court held that the tribal government on the reservation was "more or less the equivalent of a county or local government" empowered "to regulate matters of local concern within the area of its jurisdiction." 532 F.2d at 663. In this case, the Cabazon Band is seeking local decision-making authority within the parameters of State law to operate a card room for the purpose of generating tribal revenues. If the congressionally mandated goal of Indian self-determination has any substance whatsoever, it must include at least this minimal level of self-governance over the reservation.

The appellants have cited Rincon Band of Mission Indians v. San Diego County, 324 F.Supp. 371 (S.D. Cal. 1971) rev'd on other grounds 495 F.2d 1 (9th Cir.) cert. denied 419 U.S. 1008 (1974) for the proposition that a county anti-gaming ordinance was applicable to tribal card games on an Indian reservation. App. Br. 39, n.22. The appellants failed to note, however, that Santa Rosa Band expressly overruled Rincon, rejecting both its specific holding, 532 F.2d at 661 ("We cannot agree") and the reasoning upon which it was based. Id. at 662-64, and n. 14.

From the foregoing, it is readily apparent that the Cabazon Band is not "marketing an exemption" by permitting draw poker, low-ball and pan to be played on its Reservation, for these specific games are not prohibited under state law and are widely played throughout California and in five other card rooms in the Riverside County cities of Lake Elsinore and Blythe. Nor is there any significance to the fact that non-Indians may come

onto the reservation to play these games. Non-residents of Lake Elsinore and Blythe can readily go to these communities to play poker. Finally, there is no support whatsoever for the appellants' contention that the tribal card games are more prone to criminal infiltration than the hundreds of other identical games being played throughout the State. All of the factors discussed above, at 25-31, preventing criminal involvement in tribal bingo games, including the resources of the federal government, are equally applicable to the card games. For these reasons, the Court should affirm the right of the Cabazon Band to operate its tribal card room.

CONCLUSION

For all of the foregoing reasons, the Cabazon and Morongo Bands of Mission Indians respectfully urge this Court to dismiss this appeal for lack of jurisdiction or, alternatively, to affirm the judgment of the Ninth Circuit Court of Appeals.

Respectfully submitted,

GLENN M. FELDMAN*
O'Connor, Cavanagh,
Anderson, Westover,
Killingsworth & Beshears

Attorneys for Appellee
Cabazon Band of Mission Indians

BARBARA A. KARSHMER (P.C.)
GEORGE FORMAN
Alexander & Karshmer

Attorneys for Appellee
Morongo Band of Mission Indians

*Admitted in District of Columbia
Only

Appendix A - 1

MORONGO BAND OF MISSION INDIANS
11581 Potrero Road
Banning, CA 92260

An Ordinance Regulating the Play of the Game of Bingo on the Morongo Indian Reservation

BE IT ENACTED BY THE MORONGO BAND OF MISSION INDIANS AS FOLLOWS:

Section 1 - Definitions

The following terms and phrases when used in this Ordinance, shall have the following meanings ascribed to them, Except where the context clearly indicates a different meaning:

(a) Bingo or quest game shall mean and refer to the activity commonly known as bingo and all other similarly organized and played games wherein participants pay a sum of money for the use or benefit of one or more prenumbered cards. When the game commences, numbers are drawn by chance, one by one, and announced, and numbers are continually ascertained at random, until a participant announces that he has matched up on his prenumbered purchased card enough randomly drawn numbers to complete the desired winning pattern of numbers. At this time the participant calls out "bingo" or such other desired word or phrase and is declared the winner of a predetermined prize.

(b) Bingo cards shall mean and refer to the flat, usually rectangular piece of paper or thin pasteboard normally employed by players engaged in the game of bingo. More than one set of bingo numbers may be printed on any single piece of paper.

(c) Band or Morongo Band of Mission Indians shall mean the semi-sovereign federally-recognized Indian tribe which, along with certain of its members, is the beneficial owner of and the local government for the allotted and unallotted trust lands of the Morongo Indian

Reservation, located to the east of the City of Banning, County of Riverside, State of California. The Band acts through its duly-serving Tribal Council or Business Committee according to the custom and tradition of our people.

(d) Reservation or Morongo Indian Reservation shall mean all those parcels of land, both allotted and unallotted and whether or not held in trust by the United States for the Band itself or any individual Indian, which are described and included in the patent issued on December 14, 1908 by the United States to the Band for the said lands, plus any additional such lands later added to the Reservation by the United States.

(e) Player shall mean any person paying some amount of U.S. currency for admission to, or participation in, a bingo game and who has some reasonable expectation of receiving a prize if one or more of his prenumbered cards contains a sufficient amount of numbers which are the same as those announced during a bingo game.

(f) Prizes shall mean and refer to any U.S. currency, cash or other property or thing of value awarded to a player of a bingo game or players in one or a series of bingo games.

Section 2 - Findings

The Morongo Band of Mission Indians makes the following findings and bases this Ordinance thereon:

(a) The Morongo Band of Mission Indians is a semi-sovereign federally-recognized Indian tribe with the duty and authority to regulate the activities of its members and others on the Reservation in the interest of the Band and its members to the maximum extent permitted by federal law.

(b) There is a great unmet need for economic development to stimulate the Reservation's economy, and

a bingo operation will help to meet that need by providing employment for Band members, by attracting other business ventures, by encouraging Band members to make commercial use of their allotted trust lands, and by providing funds for the Band to use for general Band purposes.

(c) Due to present economic conditions, unemployment among Band members, which has always been above 50%, has reached an unacceptable level, causing severe economic hardship to many members of the Band, and must be addressed by the Band now, partially through this Ordinance.

(d) The Band now lacks the financial resources to provide adequate services for the health, welfare, and general benefit of its people, and will use the revenue from the bingo enterprise license granted under this Ordinance as a source of such funds, as noted below.

(e) According to its custom and tradition, the Band generally does not regulate the uses to which any member of the Band may devote his own allotted trust land. However, the Band anticipates that more than one member, and possible the Band itself, may wish to operate bingo enterprises on the Reservation, and that such a proliferation of bingo enterprises on the Reservation is not in the best interests of the Band. For this reason, the number of such bingo enterprises, and certain aspects of their operation, must be regulated for the health, welfare, and general interest of the Band and its members.

(f) By this Ordinance the Band intends to pre-empt and to fully occupy the field of the regulation of bingo on the Reservation, as to all those who conduct such bingo games and all those who play such bingo games, Indian and non-Indian alike.

Section 3 - Morongo Tribal Bingo Enterprise

(a) A Morongo Tribal Bingo Enterprise is hereby authorized and established as part of and for the benefit of the Morongo Band of Mission Indians.

(b) The Morongo Tribal Council is authorized and empowered to obtain suitable facilities, including parking facilities, within the exterior boundaries of the Morongo Indian Reservation, to operate and maintain the Morongo Tribal Bingo Enterprise for this purpose to enter into binding leasehold agreements or other appropriate arrangements for buildings and property located within the boundaries of the Reservation.

(c) In order to obtain persons with the necessary business and management knowledge and experience to operate the Morongo Tribal Bingo Enterprise, the Morongo Tribal Council is authorized to enter into management agreement for the maintenance, operation and management of the Tribal Bingo Enterprise on such terms and under such conditions as the Tribal Council shall determine to be fair and reasonable and in the best interests of the Morongo Band of Mission Indians; provided that the Tribal Council shall not agree to pay any management fee which is not in its judgment necessary under prevailing market conditions to obtain competent and skilled management and business assistance for the operation of the Morongo Tribal Bingo Enterprise.

(d) Bingo games may be conducted each and every day of the week and at any hour of the day or night. Games shall be operated by the Morongo Tribal Bingo Enterprise not less than three days (Friday, Saturday and Sunday) per week. There shall be no limit as to prize money for any single game or session.

(e) No person under eighteen (18) years of age shall be allowed to play bingo.

(f) All persons operating or assisting the operation or conduct of any bingo game shall wear tags evidencing their names, or other means of identifying such persons as employees of the bingo operator.

Section 4 - Use of Net Proceeds

The Band will use all of the revenues which it collects pursuant to this Ordinance for the support of programs to promote the health, education and general welfare of its people.

Section 5 - Prohibition and Penalties

(a) No person shall conduct, operate, maintain or participate in any bingo game within the boundaries of the Morongo Indian Reservation unless such bingo game is operated or conducted by the Morongo Tribal Bingo Enterprise in accordance with this Ordinance. The Tribal Council may waive this section in the case of bona fide charitable churches or other similar nonprofit reservation-based organizations who apply for exemption, provided however that such organizations do not offer prizes in excess of those allowed by California Penal Code § 326.5.

(b) Any person determined by the Band, acting through its Tribal Council, to be in violation of this Ordinance may be fined up to $500.00 for each violation.

Appendix A - 6

CERTIFICATION

We the undersigned, the duly elected officers of the Morongo Band of Mission Indians do hereby certify that the above Ordinance was adopted by the General Council at a duly authorized election held on April 23, 1983, by a vote of 150 "for", 149 "opposed".

[Robert Martin]
Robert Martin, Chairman

[Rodney Mathews]
Business Committee Member

[Paul Martin]
Business Committee Member

[Dennis R. Miller]
Business Committee Member

[Anita Soza]
Business Committee Member

[George Daily]
Business Committee Member

[Joanna Ruiz]
Business Committee Member

Approved: Secretary of the Interior

APPROVED: [9-16-86]

[Maurice Babby]
AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS, SACRAMENTO AREA OFFICE

Pursuant to the authority delegated by 209 DM 8 and 10 BIAM 3.1.

Appendix B - 1

CABAZON BAND OF MISSION INDIANS
84-245 Indio Springs Drive
Indio, CA 92201

WHEREAS: We are approving said Bingo Ordinance

TRIBAL ORDINANCE NO. 5.6:
REGULATION OF BINGO GAMES

Section 1:

As used in this ordinance, "bingo" means (a) a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random; or (b) the use of cards having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes; the winning cards shall not be known prior to the game by any person participating in the playing or the operation of the game; and all such preprinted cards shall bear the legend "Cabazon Indian Reservation."

Section 2:

In order to promote economic development of the Cabazon Indian Reservation and to generate tribal revenues, by the Cabazon Band of Mission Indians. Bingo games are hereby authorized on and within the boundaries of the Cabazon Indian Reservation, provided that such games are in conformity with laws of the Cabazon Band of Mission Indians and this ordinance.

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Section 3:

All bingo games authorized by this ordinance shall be sponsored by the Cabazon Indian Reservation. No other person, group, corporation, individual, Indian Tribe or Band, or entity is or shall be authorized to sponsor a bingo game on or within the boundaries of the Cabazon Indian Reservation.

Section 4:

All net revenues derived from a bingo game shall be kept in a special fund or account and shall not be comingled with any other fund or account. Such net revenues shall be used for the purpose of promoting the health, education, welfare and well being of the Cabazon Indian Reservation and for other tribal purposes.

Section 5:

Bingo games shall be open to the public.

Section 6:

No person under eighteen years of age shall be allowed to participate in any bingo game.

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Appendix B - 3

CERTIFICATION

We, the undersigned duly elected members of the Cabazon Band of Mission Indians, acting as and for the Cabazon Business Committee and General Council, pursuant to powers delegated to us by General Council Resolutions dated April 10, 1983 and June 5, 1985 do hereby certify the foregoing Ordinance is a true and correct copy of Cabazon Tribal Ordinance No. 5.6, as originally adopted on February 9, 1980, and as amended through September 11, 1986. Done by the Cabazon Business Committee at a special meeting conducted on SEPTEMBER 11TH, 1986 by a vote of 4 for, 0 against, 0 abstaining, at which meeting a quorum of 4 members were present.

[Arthur Welmas]
Arthur Welmas,
Tribal Chairman

[John A. James]
John James,
Secretary-Treasurer

[Brenda James Montez]
Brenda James Montez,
1st Vice Chairman

Charles Welmas,
2nd Vice Chairman

[Elisa Welmas]
Elisa Welmas, Liason
to the General Council

Approved: Secretary of the Interior

APPROVED: [9-16-86]

[Maurice Babby]
AREA DIRECTOR, BUREAU OF
INDIAN AFFAIRS, SACRAMENTO
AREA OFFICE

Pursuant to the authority
delegated by 209 DM 8 and
10 BIAM 3.1.

Appendix C - 1

CABAZON BINGO, INC.
84-245 Indio Springs Drive
Indio, CA 92201

August 28, 1986

Mr. Ron Sainz
Bingo Pavilion, Inc.
c/o Indian Palms Country Club
48-630 Monroe Street
Indio, CA 92201

Dear Mr. Sainz:

Several months ago, we forwarded to Mr. Reader new federal guidelines issued by the Assistant Secretary of the Interior on April 7, 1986. These federal guidelines require that all bingo management contracts must be approved by the Secretary of the Interior to be valid.

The Secretary's requirement that all bingo contracts be approved is required under the terms of three recent federal Court of Appeals decisions. United States ex rel. Buxbom v. Naegele Outdoor Advertising Co., 739 F.2d 473 (9th Cir. 1984); Wisconsin Winnebago Business Committee v. Koberstein, 762 F.2d 613 (7th Cir. 1985); A.K. Management Co. v. San Manuel Band of Mission Indians, 789 F.2d 785 (9th Cir. 1986). The last two of these cases deal specifically with bingo management agreements and hold that such contracts, if not approved by the Secretary, are null and void.

The Secretarial guidelines of April 7, 1986 spell out in detail the minimum requirements for an approvable bingo management agreement. In comparing the agreement between the Cabazon Band and Bingo Pavilion, Inc., with the Secretarial requirements, we find that there are substantial differences between our agreement and the terms that would be acceptable to the Secretary.

Mr. Ron Sainz
Bingo Pavilion, Inc.

Given these substantial differences in acceptable contract terms, and the fact that the Cabazon Bingo Palace has not proven to be as successful as either side initially hoped, the Cabazon Business Committee sees no benefit in attempting to renegotiate the bingo management agreement to bring it into compliance with the new federal requirements. Instead, the Cabazon Band intends to repay all of the initial capital advanced by Bingo Pavilion, Inc., with interest, and to treat the management agreement as having been terminated by operation of law.

It is our position, therefore, that the purported agreement between Bingo Pavilion, Inc. and Cabazon Bingo, Inc. is now null and void, and that all rights and obligations of either party under that agreement have been terminated. In the interest of fairness, however, Cabazon Bingo, Inc. will repay the balance due on all initial capital advanced by Bingo Pavilion, Inc., with interest.

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Mr. Ron Sainz
Bingo Pavilion, Inc.

We believe that this action, which is mandated by current federal law, is an equitable means of resolving this problem.

Sincerely,

[Arthur Welmas]

Arthur Welmas
Cabazon Bingo, Inc.

AW/mlm

[Arthur Welmas]
Arthur Welmas,
President

[John A. James]
John James,
Secretary

[Brenda James Montez]
Brenda James Montez,
Treasurer

[C.D.W.]
Charles Welmas,
Vice President

Appendix D - 1

BUREAU OF INDIAN AFFAIRS

DIVISION OF LAW ENFORCEMENT SERVICES

This presents that

Bruce Alexander James

is by authority vested in me by law commissioned a Deputy Special Officer in the Bureau of Indian Affairs and authorized to conduct investigations and exercise authority delegated by virtue of 18 U.S.C. 3055.

/s/

AREA DIRECTOR

Appendix D - 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
SOUTHERN CALIFORNIA AGENCY
3600 LIME STREET, SUITE 722
RIVERSIDE, CALIFORNIA 92501

June 20, 1986

Cabazon Band of Mission Indians
Attn: Mr. John Nichols
84-245 Indio Springs Dr.
Indio, CA 92201

Dear Mr. Nichols:

The enclosed position description is mailed in reference to the IPA assignment we had discussed last week in our office.

Sincerely,

[Tom Dowell]
Superintendent

Enclosure

As a Federal police officer, this position will patrol all reservations under the auspicies of the Southern California Agency which consists of 32 various reservations for violations of Federal Fish & Games, timber resource violations, destruction of government property, theft/ embezzlement from tribal organizations, security for BIA enclaves (BIA storage areas and administrative offices), to prevent or eradicate the illegal cultivation of marijuana on managed lands, and any other violations of other general laws of the United States (excluding 18 USC 1151 and 1153 because of P.L. 280) that occur within the Exterior Boundaries of the reservations (i.e. felon in possession of a firearm, arson, narcotic violations, assaulting Federal officers or employees, etc)

DUTIES:

Maintains law and order within the area of assignment by patrolling in a patrol vehicle, investigating suspicious situations, and taking action as appropriate.

Where serious crimes or personal injury traffic accidents are involved, determines necessary action, notifies appropriate authorities, safeguards scenes, identifies and obtains information from witnesses, and develops preliminary investigative leads where the Bureau of Indian Affairs may be held civilly liable. Performs investigative work such as investigation of misdemeanors, traffic accidents involving property damage or personal injury, or incidents of alleged or suspected burglary or vandalism. Investigates, apprehends, arrests, and detains persons charged with violations of Title 25, Code of Federal Regulations; Title 19 United States Code; Tribal Law and Order Codes; Federal, state and tribal games and fish laws; and all other Federal or state statutes that may be applicable.

Makes arrests in cases of crimes of misdemeanors personally witnessed or upon establishment of necessary probable cause, takes persons arrested before appropriate authority for booking or formal charging; serves Federal, state, local or tribal warrants, subpoenas and other court

papers; testifies at hearing and trials as an expert witness in Federal, state, local and tribal courts as required; and prepares and submits reports of incidents or traffic accidents, daily and weekly activities, and narrative and statistical reports as required.

FACTORS

1. Knowledge Required by the Position:
Incumbent must have a knowledge of law enforcement procedures and techniques; ability to work and deal effectively with individuals and groups, skill in collection, assembling and presenting pertinent facts; ability to prepare clear and concise reports; and ability and willingness to accept responsibility.

A working knowledge of most applicable Federal, state, local and tribal laws and tribal customs; fish and game laws appropriate to the location; jurisdictional laws, rules and relationships in the area served and differences with respect to neighboring states and tribes; and laws applicable to specific areas, incidents and individuals.

Thorough knowledge of the Constitutional protections afforded to individuals including rules concerning search, seizure, questioning and arrest; the difference between felonies and misdemeanors and between criminal and civil infractions; and the procedures for handling suspects.

Thorough knowledge of, and competence in the use of, all firearms used in performing the work of the position.

Thorough knowledge of first aid, including CPR, and of the equipment used in first aid.

Knowledge of radio procedures and ability to operate radio equipment.

Must be a capable and competent driver with a good driving record, and must possess a valid driver's license.

Must be able to learn to operate patrol boats and trucks.

2. Supervisory Controls:
The incumbent works under the supervision of the Supervisory Police Officer (Sgt) who provides guidance in overall policies and desired results. The incumbent is expected to perform assigned functions on own initiative utilizing experience, skill and tact. Work is reviewed frequently out of contact, the incumbent must act on all types of problems on own initiative based on knowledge of enforcement procedures and policies.

3. Guidelines:
Guidelines include the full array of Federal, state, local and tribal laws concerning crimes and misdemeanors; Title 25, Code of Federal Regulations; Title 18 United States Code, Bureau of Indian Affairs Manual; Area and Agency policies and directives; Constitutional rules and precedent court decisions concerning the rights of suspects; rules of evidence; and police instructions and operating procedures, also the IPA agreement provisions must be upheld. The guidelines are extremely complex and frequently may be incomplete or inappropriate to the situation, and the incumbent is expected to make some independent judgments concerning the seriousness of an incident or the proper approach without recourse to supervision.

4. Complexity:
The incumbent is involved in all types of police activity, including dealing with civil and criminal infractions under Federal, state, local and tribal laws which may be at variance or in conflict with one another. The proper course of action may have to be selected from many alternatives. The full range of possible human actions is involved and the web of applicable laws and jurisdictional rules is extremely complex.

Identifies violations and as required makes arrests or issues citations; confiscates evidence and may transport violators by foot, automobile, or boat. Handling procedures differ according to severity of violation committed, geographical location, and available assistance.

5. Scope and Effect:
The work has considerable impact on the safety and well-being of the community served; on relations between the Bureau and the tribe and between the tribe and surrounding non-Indian communities; and on relations with Federal, state, local and Tribal law enforcement units.

Actions can mean a difference between life and death and between order and disorder. The purpose of the work is to prevent crime through an alert, visible law enforcement presence; to stop illegal acts as they occur; and to preserve peace, safety and order within the community served through effective police action.

The enforcement of applicable regulations and laws will assure the interests of the United States Government and Tribes by protecting not only the timber resources and other natural resources, but also by securing the safety and well-being of Bureau employees assigned to the Southern California Agency along with the thousands of dollars of Bureau-owned equipment.

6. Personal Contacts:
Personal contacts are with the general public, both Indian and non-Indian, as citizens and with individuals or groups as suspected or observed offenders, as witnesses, complainants, victims, prisoners, or persons on parole; with tribal officials, with state, local and tribal police officers and other BIA police officers; and with court and law enforcement personnel at the Federal, state and local Tribal levels.

7. Purpose of Contacts:
Contacts with the public are to secure compliance with laws and regulations and to prevent infractions. Contacts with suspects and offenders are to prevent or stop illegal activity and to question, detain and, if necessary, arrest them. Contacts may involve breaking up fights, disarming angry or distraught persons, calming potentially violent situations, and/or apprehending and arresting resisting violators. Contacts with court officials are to con-

duct offenders and suspects to and from court sessions or to provide expert testimony.

Contacts with other law enforcement officials involve securing cooperation or assistance or working out issues of jurisdiction. Contacts with tribal officials involve explaining enforcement actions, explaining laws and regulations, working out procedural or jurisdictional problems, obtaining warrants, and similar activities.

8. Physical Demands:
Incumbent must have considerable physical strength and agility to pursue suspects, sometimes on foot; to make and maintain arrests despite possible resistance; to move heavy objects which may present hazards (objects on the highway, etc); to fight fires; to make searches involving traversing difficult terrain under adverse conditions; and to handle any emergency situation. Incumbent must be able to defend self and others against physical attack.

9. Work Environment:
The work environment involves high risk with exposure to potentially dangerous situations, including attack with deadly weapons at unexpected times. Both indoor and outdoor work is involved, including driving or working outside in extreme weather. There is an ever-present danger of death or injury from physical assault or accident in the line of duty.

The incumbent will be subjected to a wide range of risks and discomforts in making arrests, patrolling areas on foot and by automobile.